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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,114	02/21/2006	Georg Bruendermann	DAL0162PUSA	2854
22045	7590	10/13/2009		
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
HECKERT, JASON MARK				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
10/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,114

Applicant(s)

BRUENDERMANN, GEORG

Examiner

JASON HECKERT

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 7/30/09 have been fully considered but they are not persuasive. Applicant argues that '598 teaches away from the instant application because '598 teaches a rotatable nozzle head. Examiner disagrees. The examiner interpreted the rotation of a nozzle head as a teaching that it is advantageous to provide a vertical axis of rotation, such that fluid can be supplied in a multitude of directions. One of ordinary skill in the art realizes that other means are known that allow a vertical axis of rotation. Schellekens teaches that hose drums are known that can rotate along vertical and horizontal axes. Such a device achieves the same movement downhose as '598's rotatable nozzle. Thus, the examiner finds the combination to be proper and that the combination obviates the instant invention.

Claim Objections

2. Claim 1 objected to because of the following informalities: "hose drum" should read – a hose drum-- . Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1291598 ('598) in view of Schellekens. '598 shows a device for cleaning flues of

combustion systems comprising a nozzle head 1 that directs fluid in the flue, a hose 7 that is connected to the nozzle head for delivering fluid, a hose reel 6 for unwinding and winding the hose so that vertical position can be adjusted, wherein the hose reel has a single axis about which it is rotated. A drive unit 8 powers the reel via a motor 9. The nozzle head has multiple nozzles 5 that are spaced apart in a circumferential direction (figure 2). '598 does disclose a hose reel with a horizontal axis of rotation for winding, but does not disclose that the drum reel also has a vertical axis of rotation for rotating the nozzle. However, '598 does teach that a vertical axis of rotation is advantageous for the apparatus, so that the nozzle may rotate and spray water in a multitude of directions. '598 includes a device comprising a turbine 2 and gear train 3 so that the nozzle may rotate about a vertical axis. Thus, it is well known to provide nozzle rotation about a vertical axis. Furthermore, drum reels with multiple axes of rotation are well known in the art of delivering high pressure cleaning fluid to pipes. It would be obvious to substitute another known drum reel design with the hose reel of '598 as it would provide expected results to one of ordinary skill. Schellekens shows a drum reel with rotation about a carrier with a vertical axis as well as a horizontal axis for winding (see figures 1-4). It would have been obvious at the time of invention to modify '598 and include the hose reel of Schellekens in order to provide multiple axes of rotation.

5. In regards to claim 5, the combination of '598 in view of Schellekens is capable of being aligned in such a manner. In regards to claim 6 and 15, the rotation in both prior art disclosures is controllable, thus the inclusion of a control unit is considered to be inherent, if not obvious to one of ordinary skill. In regards to claim 7, '598 obviates

controlling pressure with a pump 11. Claims 8-9, 12 are regarded as intended use as they do not positively recite structural limitations. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988). Additionally, claims 5, 7, 9, 12 discuss what the device "can" do, not what the device "is". The combination of '598 and Schellekens is believed to be capable of operating in the same manner.

6. In regards to claim 10, '598 discloses that a motor can control the rotation about the horizontal axis. One of ordinary skill knows that a motor can be used to control rotation about a vertical axis as well. Schellekens already discloses free movement about a vertical axis, and including a conventional motor to automate that movement is not considered to be patentably distinct. It has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

7. Claims 13-14 rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1291598 in view of Schellekens and further in view of DE 2216086 ('086). '598 does not teach an eye for fastening a tension rope. '086 clearly shows an eye for fastening a rope (figure 2) to a nozzle head. It would have been obvious at the time of invention to

modify '598 in view of Schellekens, as stated above, and further include an eye, as taught by '086, for fastening a tension rope.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art
Unit 1792

JMH